

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 U.S. BANK NATIONAL ASSOCIATION, AS)  
4 TRUSTEE FOR GREENPOINT MORTGAGE)  
5 FUNDING TRUST MORTGAGE )  
6 PASSTHROUGH CERTIFICATES, SERIES )  
7 2007- AR7, )

Case No.: 2:16-cv-00577-GMN-GWF

ORDER

8 Plaintiffs, )

9 vs. )

10 SFR INVESTMENTS POOL 1, LLC; )  
11 VICTORY OVATION HOMEOWNERS )  
12 ASSOCIATION; ALESSI & KOENIG, LLC; )  
13 DOES I through X and ROE )  
14 CORPORATIONS I through X, )

15 Defendants. )

16 SFR INVESTMENTS POOL 1, LLC, a )  
17 Nevada limited liability company, )

18 Counter/Cross Claimant, )

19 vs. )

20 U.S. BANK NATIONAL ASSOCIATION, AS)  
21 TRUSTEE FOR GREENPOINT MORTGAGE)  
22 FUNDING TRUST MORTGAGE )  
23 PASSTHROUGH CERTIFICATES, SERIES )  
24 2007- AR7; and MORTGAGE ELECTRONIC )  
25 REGISTRATION SYSTEMS, INC., as )  
nominee beneficiary for GREENPOINT )  
MORTGAGE FUNDING, INC; and ALVIN )  
BROWNE, an individual, )

Counter/Cross Defendants. )

1 Lenders and investors have been at odds over the legal effect of a homeowners'  
2 association's ("HOA") nonjudicial foreclosure of a superpriority lien on a lender's first trust  
3 deed pursuant to Nevada Revised Statutes § 116.3116. *See Freedom Mortg. Corp. v. Las Vegas*  
4 *Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1180 (D. Nev. 2015). The Nevada Supreme Court  
5 seemed to have settled the debate in *SFR Invs. Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419  
6 (Nev. 2014), holding that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper  
7 foreclosure of which will extinguish a first deed of trust." *SFR*, 334 P.3d at 419.

8 However, on August 12, 2016, two members of a Ninth Circuit panel held in *Bourne*  
9 *Valley Court Trust v. Wells Fargo Bank* that Chapter 116's nonjudicial foreclosure scheme  
10 "facially violated mortgage lenders' constitutional due process rights" before it was amended in  
11 2015. *Bourne Valley Ct. Trust v. Wells Fargo Bank*, 2016 WL 4254983, at \*5 (9th Cir. Aug. 12,  
12 2016). As a result, *Bourne Valley* is likely dispositive of this and the hundreds of other  
13 foreclosure cases pending in both state and federal court. To save the parties from the need to  
14 invest resources briefing the effect of the *Bourne Valley* opinion before the finality of that  
15 opinion has been determined, the Court **STAYS** all proceedings in this case pending exhaustion  
16 of all appeals of *Bourne Valley*.

## 17 **I. LEGAL STANDARD**

18 "[T]he power to stay proceedings is incidental to the power inherent in every court to  
19 control the disposition of the causes of action on its docket with economy of time and effort for  
20 itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). "A trial  
21 court may, with propriety, find it is efficient for its own docket and the fairest course for the  
22 parties to enter a stay of an action before it, pending resolution of independent proceedings  
23 which bear upon the case." *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir.  
24 1979). In deciding whether to grant a stay, a court may weigh the following: (1) the possible  
25 damage which may result from the granting of a stay; (2) the hardship or inequity which a party

1 may suffer in being required to go forward; (3) the orderly course of justice measured in terms  
2 of the simplifying or complicating of issues, proof, and questions of law which could be  
3 expected to result from a stay. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).  
4 However, “[o]nly in rare circumstances will a litigant in one case be compelled to stand aside  
5 while a litigant in another settles the rule of law that will define the rights of both.” *Landis*, 299  
6 U.S. at 255. A district court’s decision to grant or deny a *Landis* stay is a matter of discretion.  
7 *See Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir.  
8 2007).

## 9 **II. DISCUSSION**

10 At the center of this case are the HOA-foreclosure sale conducted pursuant to Nevada  
11 Revised Statutes § 116.3116 and the competing arguments that the foreclosure sale either  
12 extinguished the bank’s security interest under the *SFR* holding or had no legal effect because  
13 the statutory scheme violates due process. Because the Ninth Circuit in *Bourne Valley* held that  
14 the scheme was facially unconstitutional, *see Bourne Valley*, 2016 WL 4254983, at \*5, the  
15 *Bourne Valley* opinion and any modification of that opinion have the potential to be dispositive  
16 of this case. Under this circumstance, the *Landis* factors weigh strongly in favor of staying this  
17 action pending final resolution of the *Bourne Valley* decision. Indeed, the possible prejudice to  
18 the parties is minimal as the only potential harm is that the parties may wait longer for  
19 resolution of this case if it is stayed. However, if this case is not stayed, a delay would also  
20 result from any motions for reconsideration that may be necessitated if the current decision in  
21 the *Bourne Valley* case does not stand. Accordingly, a stay is not likely to appreciably lengthen  
22 the life of this case. Further, in the absence of a stay, judicial resources may be unnecessarily  
23 expended to resolve issues which may ultimately be decided by higher courts to which this  
24 Court is bound to adhere. Because the *Bourne Valley* decision is squarely on point, the orderly  
25 course of justice likewise weighs in favor of a stay. Accordingly, the Court finds that staying

1 this action pending final resolution of *Bourne Valley* would be efficient for the Court's own  
2 docket and the fairest course for the parties. *See Leyva*, 593 F.2d at 863.

3 **III. CONCLUSION**

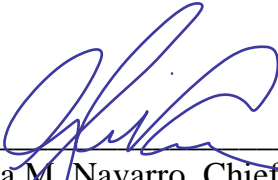
4 **IT IS THEREFORE ORDERED** that this case is administratively **STAYED** pending  
5 exhaustion of all appeals of *Bourne Valley Court Trust v. Wells Fargo Bank*, No. 15-15233 (9th  
6 Cir. Aug. 12, 2016). Once exhaustion occurs, any party may move to lift the stay. Until that  
7 time, all proceedings in this action are stayed.

8 **IT IS FURTHER ORDERED** that all pending motions are **DENIED** without prejudice  
9 with leave to refile within twenty-one days after the stay is lifted.

10 **IT IS FURTHER ORDERED** that SFR Investments Pool 1, LLC, shall care for,  
11 preserve, and maintain the Property.

12 **IT IS FURTHER ORDERED** that, beginning on October 10, 2017, the parties must  
13 file a joint status report updating the Court on the status of this case every one-hundred and  
14 eighty days. Along with the joint status report, SFR Investments Pool 1, LLC, shall submit a  
15 statement affirming that all expenses necessary to maintain the property, including but not  
16 limited to, timely and full payment of all homeowners association assessments, property taxes,  
17 and property insurance premiums due and owing or past due at any time during the effective  
18 period of this Stay are current and up to date.

19  
20 **DATED** this 10 day of April, 2017.

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24 Gloria M. Navarro, Chief Judge  
25 United States District Judge